

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4393 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements? YES
2. To be referred to the Reporter or not? YES :
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement? NO
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? NO
5. Whether it is to be circulated to the Civil Judge? : NO
NO

A S SINDHI

Versus

STATE OF GUJARAT

Appearance:

MR JA ADESHRA for Petitioner

MR SP HASOORKAR WITH MR ND GOHIL, for Respondent No. 1

CORAM : MR.JUSTICE R.BALIA.

Date of decision: 15/10/1999

ORAL JUDGEMENT

1. Heard learned counsel for the parties. This petition for quashing and setting aside the departmental inquiry instituted against the petitioner vide chargesheet dated 27/9/94 has been filed in the following circumstances.

The facts about the petitioner's progress in the service are that the petitioner joined as Junior Engineer

in Public Works Department on 30/5/61. He was promoted as Deputy Executive Engineer on 28/1/71 and was further promoted to the post of Executive Engineer in Irrigation Department on 8/6/84. The petitioner received promotion on the post of Superintending Engineer thereafter on 21/2/94 w.e.f. 30/6/92 and from the said post, the petitioner retired on 31/3/99 while working at Palanpur Irrigation Canal. This goes to show that the petitioner has been considered and accorded promotions as and when it has fallen due to him and there is a satisfactory progress in achieving higher post in service.

While the petitioner was working as an Executive Engineer, Dharoi Canal between 8/6/84 to 15/7/85, the purchases were being made for the project of bricks. During this period, the petitioner had approved purchases of 77,600 bricks required for the bricks lining of the work of canal urgently as per requirement placed before it by the Deputy Executive Engineer and the same has also received approval of the Superintending Engineer. In connection with the purchases made between 1983-84 and 1984-85 of the bricks at the said project, an inquiry was instituted by the respondents in September 1994, that is to say, after about 10 years of the alleged transaction. In the said inquiry, the petitioner was served with the chargesheet dated 27th September, 1994. The charge to which the petitioner was subjected that, during 1984-85, while purchasing bricks worth Rs.40,279/-, which were more than Rs.30,000/-, the petitioner has not followed the requisite procedure before directing purchases of the bricks which has resulted in loss of Rs.1,240/- only as a result of purchases made at the higher market price. The charge is only of making purchases by ignoring the rules resulting in financial loss of Rs.1,240/-.

After service of chargesheet in 1994, an inquiry officer was for the first time appointed on 7/1/1999. The inquiry officer was Departmental Inquiry Commissioner. However, the said office of inquiry commissioner was closed in September 1999 and thereafter, a new inquiry officer has been appointed who is a retired chief engineer from the penal of officers prepared by the Department in consultation with the General Administration Department. The petitioner on his retirement has been released provisional pension, however finalization of his pension has not taken place nor other retiral benefits have been computed and given to the petitioner, nor he is permitted to commute the pension as per rules because of the pendency of the aforesaid inquiry.

2. The petitioner has in the aforesaid circumstances challenged the continuous of the inquiry against him inter alia on the ground that the inquiry itself having been instituted more than 10 years after the alleged date of incident and thereafter, no efforts have been made even to appoint the inquiry officer for more than 5 years, the proceedings must be quashed as being arbitrary, particularly keeping in view that the service record of the petitioner apart from this inquiry is otherwise clean which has reflected from the regular promotions being granted to the petitioner since the date of his recruitment and no charge other than technical lapses in following the rules has been levelled against the petitioner in the chargesheet of 1994. Apart from the merits of the case, the maximum loss which has been caused to the State as a result of non-adherence to the rules is assessed in the chargesheet at Rs.1,240/only, which can hardly justify withholding the retiral benefits of the petitioner. The petitioner has also offered that at any rate, in order to bring the curtain down on the issue, he is prepared to deduction of Rs.1,240/-, the total amount of loss claimed to have been caused to the State because of the alleged non-adherence to the rules by the petitioner from the pensionary dues or if directed, the petitioner is prepared to pay the same.

3. Learned counsel for the respondents has vehemently urged that an inquiry having been instituted in respect of financial irregularity, the respondents be allowed to continue with the inquiry inasmuch as under the rules particularly rule 189-A and 189-B of the BCSR Rules, the respondents have right to order deduction in pension or effect recovery from the pension by making appropriate orders. However, the above facts about the promotion and the import of charge against the petitioner are not denied.

4. It is to be noticed that Supreme Court in State of Madhya Pradesh v/s Bani Singh and another AIR 1990 SC 1308 has expressed the circumstances in which a departmental inquiry can be quashed at that stage without its being completion. It was a case that has arisen against the order of Tribunal quashing the proceedings against the incumbent on the ground of delayed institution and delayed proceedings. In that case, in respect of certain incident which happened in 1975-76, a chargesheet has been issued on the incumbent in April 1987, that is to say, after 11 years of the alleged incident. The Tribunal alongwith quashing the inquiry has also granted other reliefs concerning expungement of adverse entries in the ACRs and about promotion with

effect from the date the persons junior to the incumbent were promoted during this period on the ground of pending inquiry. The like contention which has been raised before this Court has been raised before the Supreme Court that the Tribunal should have allowed the inquiry officer to complete the enquiry on merits. The Court held that, "We are unable to agree with this contention of the learned counsel that this contention of the matter. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage.

On this ground, the apex Court declined to interfere with the Tribunal's order.

5. The matter again came up for consideration before the Supreme court in State of Andhra Pradesh v/s Radhakishan in AIR 1998 SC 1833. While the Court made it clear that,

"It is not possible to lay down any predetermined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the Court has to take into consideration all relevant factors and to balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay, particularly when delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him be concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in dealing with the proceedings. In considering whether delay is vitiated the disciplinary proceedings, the court has to consider the nature of charge, its complexity and on what account, the delay has occurred. Normally, disciplinary proceedings should be allowed to take its course as per relevant rules, but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to

blame for the delay or when there is proper explanation for the delay in concluding the disciplinary proceedings. Ultimately, the Court is to balance these to diverse considerations."

On the facts of the case on hand, the court found that the delay in conclusion of inquiry was unjustified, not properly explained and the inquiry was quashed. The inquiry in the case was instituted in 1995 about the irregularities alleged to have been caused in 1987 and before.

6. Learned counsel for the respondents had placed reliance on 1990 [2] SCC 798, [1982] 2 SUPP. SCC 486, AIR 1989 SC 1843 & [1994] 1 GLR 628 and unreported decision of this Court showing instances that the Court should not interfere in such cases. However, these cases need not be discussed in detail. As noticed above, each case depends on facts of its own and has to be examined in the surrounding circumstances and the balance has to be struck by keeping in consideration the facts and circumstances of the case which is at hand before the court. The principles enumerated in AIR 1998 SC 1833 referred to above are not in deviation from the principles laid down earlier or later.

7. If that is kept in view, to recap the chargesheet was served on the petitioner in 1997, after about 10 years of period of alleged incident, no explanation has been furnished for serving the chargesheet after 10 years of the alleged irregularities in purchasing the bricks in 1984-85. According to their own showing the respondent was appointed as inquiry officer for the first time in January 1999 and that too, had to be changed later on when the office of the Inquiry Commissioner was closed, obviously, when inquiry officer itself was not appointed, until the petitioner has retired from service after 5 years of institution of the departmental enquiry and the chargesheet, the petitioner cannot be held responsible for delay in conducting the inquiry or for obstructing its course.

8. So far as the nature of charge is concerned, it is apparent from the chargesheet itself that, except observing that in purchasing the commodities worth above Rs.30,000/- at a time, necessary procedure has not been followed, no suggestion of malafide intention or doubt about integrity has been indicated in the chargesheet and the maximum loss which is alleged to have been caused to the State as a result of non-adherence to the rules is

meagre sum of Rs.1,240/-, which the petitioner has offered to pay to the State Treasury even without conclusion of enquiry in order to buy peace. The charges cannot be considered to be of such a gravity so as to put the retired employee at the pains of withholding entire retiral benefits for maximum loss of Rs.1,240/- only.

9. In the circumstances, I am of the opinion that further continuation of the inquiry after the petitioner has retired at the pains of withholding his retiral benefits will result in avoidable mental agony, monetary loss and subjection to unnecessarily prolonged proceedings without the fault of the petitioner. Even rule 189-A to which great reliance has been placed by the learned counsel for the respondents authorises the Governor to withhold or withdraw a pension or any part of it is primarily intended for recovering from pension the whole or any part of the pecuniary loss caused to the Government. Withholding of pension is envisaged ordinarily when the incumbent is found guilty of grave misconduct or negligence during the period of his service which may entail major penalty of removal or dismissal or reduction in rank. From the facts of this case, it is apparent that this is not a case in which the reasonable exercise of power can result in anything except recovering the whole of the pecuniary loss alleged to have been caused to the Government as a result of non-adherence of rules in purchases made in 1984-85 by the petitioner when his other service record has throughout been shown to be unblemished.

10. In the facts and circumstances of the case, I am of the opinion that the matter against the petitioner need be closed in the interest of justice without putting the petitioner under stress of inquiry by accepting alternative suggested by the petitioner which is in consonance with rule 189-A, the maximum to which respondents themselves lay claim.

11. In the circumstances, this petition is allowed. The respondents are restrained from continuing with the inquiry so far as the petitioner is concerned in respect of the chargesheet dated 27/9/94 and the petitioner shall deposit Rs.1,240/- in the Government Treasury within a six weeks without prejudice to his unblemished record of service. On deposit of Rs.1,240/-, the respondents shall finalize the petitioner's retiral benefits within a period of two months. Rule made absolute. There shall be no orders as to costs.

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